JS 44 (Rev. 12/12) JHS

17-CV-1549

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

17 1549

I. (a) PLAINTIFFS
KRISTY M. KELLER-SMITH

DEFENDANTS
RELIANCE STANDARD LIFE INSURANCE COMPANY

(b) County of Residence of First Listed Plaintiff Wapauca, WI
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
F. Michael Friedman, Esq., Law Office of F. Michael Friedman, P.O. Box 467, Drexel Hill, PA 19026-0467

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
29 U.S.C. Section 1132 (ERISA Section 502)

Brief description of cause:
Recovery of ERISA Plan Benefits

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND $** CHECK YES only if demanded in complaint: **JURY DEMAND:** ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*: JUDGE DOCKET NUMBER

APR -5 2017

DATE 04/04/2017 SIGNATURE OF ATTORNEY OF RECORD

PA Bar #: 22658

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

JHS

UNITED STATES DISTRICT COURT 17 1549

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 810 B Sunridge Court, Waupaca, WI 54981

Address of Defendant: 2001 Market Street, Suite 1500, Philadelphia, PA 19103

Place of Accident, Incident or Transaction: ERISA benefits claim was administered and decided, upon information and belief at Defendant's address in Philadelphia, PA. *(Use Reverse Side For Additional Space)*

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes☐ No☒

Does this case involve multidistrict litigation possibilities? Yes☐ No☒

RELATED CASE, IF ANY:
Case Number: ____________ Judge ____________ Date Terminated: ____________

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes☐ No☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes☐ No☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ No☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes☐ No☒

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*
1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) Employee Retirement Income Securities Act ("ERISA")

B. *Diversity Jurisdiction Cases:*
1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) ____________

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, F. Michael Friedman, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought.

DATE: 4·4·2017 ____________ 22658
Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

APR -5 2017

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4·4·2017 ____________ 22658
Attorney-at-Law Attorney I.D.#

CIV. 609 (5/2012)

JHS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

KRISTY M. KELLER-SMITH	:	CIVIL ACTION
v.	:	
RELIANCE STANDARD LIFE INSURANCE COMPANY	:	NO. 17 1549

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )

(f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

4.4.2017	F. Michael Friedman	[signature]
Date	**Attorney-at-law**	**Attorney for** Plaintiff
610-453-3037	610-903-4610	fmf@mfriedmanlaw.com
Telephone	**FAX Number**	**E-Mail Address**

(Civ. 660) 10/02

APR -5 2017

F. MICHAEL FRIEDMAN
ATTORNEY AND COUNCILOR AT LAW
PO BOX 467
DREXEL HILL, PA 19026-0467
610-259-7755
FAX 610-259-1220
fmf@mfriedmanlaw.com

MEMBER, PENNSYLVANIA & NEW JERSEY BARS

340 N. LANDSDOWNE AVE.
LANDSDOWNE, PA 19050

April 4, 2016 17 1549

Clerk, United States District Court
2609 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1729

Re: Keller-Smith v. Reliance Standard Life Insurance Company

Dear Sir/Madam:

I enclose, with this letter, the original Complaint in the matter, Civil Cover Sheet, the Designation Form (2 copies), and Case Management Track Designation. I also enclosed a disk with pdf copies of all of these documents. In addition I enclose my check, payable to the order of the Clerk of Court, EDPA, for $400.00 in payment of the filing fee.

Please contact me if there are any problems regarding this. As I am out of the office quite a bit you may call my cell phone, 610-453-3037 if there are any immediate problems.

Very truly yours,

F. Michael Friedman

FMF/mm
Enclosures

cc: Hudson T. Ellis, Esquire

#400 JHS

F. Michael Friedman, Esq.
Attorney ID #: 22658
P.O. Box 467
Drexel Hill, PA 19026-0467
t: 610.453-3037
f: 610.903.4610
e. fmf@mfriedmanlaw.com

Counsel for plaintiff

17 1549

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

KRISTY M. KELLER-SMITH,

Plaintiff,

v.

RELIANCE STANDARD LIFE INSURANCE COMPANY,

Defendant.

COMPLAINT

Civil Action No.

COMES NOW, Plaintiff, Kristy Keller-Smith, and makes the following representations to the Court for the purpose of obtaining relief from Defendant's refusal to pay long term disability (LTD) benefits due under an ERISA employee benefit plans, and for Defendant's other violations of the Employee Retirement Security Act of 1974 ("ERISA"):

JURISDICTION AND VENUE

1. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1337 and 29 U.S.C. § 1132(e) (ERISA § 502(e)). Plaintiff's claims "relate to" "employee welfare benefits plan[s]" as defined by ERISA, 29 U.S.C. § 1001 *et seq*. and the subject Benefit Plan constitutes "plan[s] under ERISA."

2. The ERISA statute, at 29 U.S.C. § 1133, as well as Department of Labor regulations, at 29 C.F.R. § 2560.503-1 provide a mechanism for administrative or internal appeal

of benefits denials. In this case, those avenues of appeal have been exhausted and this matter is now properly before this court for judicial review.

3. Venue is proper within the Eastern District of Pennsylvania pursuant to 29 U.S.C. § 1132(e)(2).

PARTIES

4. Plaintiff, Kristy Keller-Smith, (hereinafter "Plaintiff"), is currently and was at all relevant times, a resident of Waupaca County, Wisconsin,.

5. Defendant Reliance Standard Life Insurance Company (hereinafter "Reliance Standard"), is an insurance company authorized to transact the business of insurance in this state, and may be served with process at its place of business, as follows: 2001 Market Street, Suite 1500, Philadelphia, PA 19103.

6. Defendant Reliance Standard is the party obligated to pay benefits and to determine eligibility for benefits under Group Long Term Disability Policy No. LTD 118421, issued by Reliance Standard to McCain Foods USA, Incorporated.

FACTS

7. Plaintiff was employed by McCain Foods Incorporated ("McCain"), in its Wisconsin location.

8. By virtue of her employment, Plaintiff was enrolled in the Long Term Disability Plan under the McCain Foods USA, named "Inc. Employee Welfare Benefits Plan," which is an ERISA employee welfare benefit plan (the "Plan").

9. Benefits under the Plan are insured by Reliance Standard under Group Long Term Disability Policy No. LTD 118421, issued by Reliance Standard to McCain.

10. Plaintiff is a participant or beneficiary of the Plan.

11. Plaintiff ceased work due to a disability on or about May 20, 2009, while covered under the Plan.

12. Plaintiff has been and continues to be disabled as defined by the provisions of the Plan and relevant policies.

13. Plaintiff filed an application for LTD benefits under the Plan.

14. Reliance Standard approved Plaintiff's application and paid benefits from November 16, 2009 until June 1, 2014.

15. By letter dated June 30, 2014, Reliance Standard terminated Plaintiff's LTD claim.

16. Plaintiff timely appealed the termination of her benefits, supporting her appeal with further evidence of her disability.

17. By letter dated May 27, 2015, Reliance Standard denied that appeal, and stated that its decision was final.

18. Plaintiff has exhausted her administrative remedies under the Plan.

19. Reliance Standard would pay any benefits due out of its own funds.

20. Reliance Standard owed Plaintiff duties as a fiduciary of the ERISA Plan, including the duty of loyalty.

21. Reliance Standard was under a perpetual conflict of interest because the benefits would have been paid out of its own funds.

22. Reliance Standard allowed its concern over its own funds to influence its decision-making.

23. Reliance Standard breached its fiduciary duties to Plaintiff, including the duty of loyalty.

FIRST CAUSE OF ACTION
FOR PLAN BENEFITS PURSUANT TO 29 U.S.C. §§ 1132(a)(1)(B)

PLAINTIFF incorporates the allegations contained in the above paragraphs as if fully stated herein and says further that:

24. Under the terms of the Plan and policy, Defendant agreed to provide Plaintiff with LTD benefits in the event that Plaintiff became disabled as defined by the Plan.

25. Plaintiff is disabled and entitled to benefits under the terms of the Plan.

26. Defendant failed to provide benefits due under the terms of the Plan, and these denials of benefits to Plaintiff constitute breaches of the Plan.

27. The decisions to deny benefits were wrong under the terms of the Plan.

28. The decisions to deny benefits and decision-making processes were arbitrary and capricious.

29. The decisions to deny benefits were influenced by the Defendant's financial conflict of interest.

30. The decisions to deny benefits were not supported by substantial evidence in the record.

31. As a direct and proximate result of the aforementioned conduct of the Defendant in failing to provide benefits for Plaintiff's disability, Plaintiff has been damaged in the amount equal to the amount of benefits to which she would have been entitled to under the Plan.

32. As a direct and proximate result of the aforementioned conduct of the Defendant in failing to provide benefits for Plaintiff's disability, Plaintiff has suffered, and will continue to suffer in the future, damages under the Plan, plus interest and other damages, for a total amount to be determined.

WHEREFORE. Plaintiff requests that this Court grant her the following relief in this case:

On Plaintiff's First Cause of Action:

1. A finding in favor of Plaintiff against the Defendant;

2. Damages in the amount equal to the disability income benefits to which she was entitled through the date of judgment, for unpaid benefits pursuant to 29 U.S.C. § 1132(a)(1)(B);

3. Prejudgment and postjudgment interest;

4. An Order requiring the Plan or appropriate Plan fiduciaries to pay continuing benefits in the future so long as Plaintiff remains disabled under the terms of the Plan, as well as any other collateral benefits to which she might be entitled on the basis of being disabled under the LTD plan, in the future so long as Plaintiff remains disabled under the terms of the Plan;

5. Plaintiff's reasonable attorney fees and costs; and

6. Such other relief as this court deems just and proper.

Dated this 4th day of April, 2017.

F. Michael Friedman, Esq.
Counsel for plaintiff

Co-Counsel for the plaintiff
(Motion for admission *pro hac vice* to be filed)
Hudson T. Ellis, Esq.
Tenn Bar ID# 028330
414 McCallie Avenue
Chattanooga TN 37402
t: 423.634.2506
f: 423.634.2505
e: ellish@buchanandisability.com